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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3

4 SAMUEL KATZ, ALEXANDER BRAURMAN, No. 1:18-CV-10506
5 LYNNE RHODES, individually, and
6 on their own behalf and on behalf
7 of all others similarly situated
8 Plaintiffs,

9
10 -vs-

11 LIBERTY POWER CORP., LLC,
12 LIBERTY POWER HOLDINGS, LLC,
13 Delaware limited liability companies,

14 Defendants.

15 _____/
16 LIBERTY POWER CORP., LLC, and
17 LIBERTY POWER HOLDINGS, LLC,
18 Third-Party Plaintiffs,

19 -vs-

20 MEZZI MARKETING, LLC,

21 Third-party Defendant.

22 _____/
23 **CONTAINS CONFIDENTIAL PORTIONS**

24 **PAGES 82, 104, & 136**

25 **BOUND SEPARATELY**

DEPOSITION OF MICHELLE CASTILLO

Wednesday, May 8, 2019

10:36 a.m. - 5:07 p.m.

110 East Broward Boulevard

Suite 1700

Fort Lauderdale, Florida 33301

Stenographically Reported By
Pamela J. Pelino, RPR, FPR, CLR
Notary Public, State of Florida

JOB # 160216

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14	007746, 007747, 007748, KATZ 049763, 049764,	
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16	Plaintiff's Exhibit 19	122
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1 M. CASTILLO
2 - - -
3 E X H I B I T S A T T A C H E D
4 - - -
5 (Marked in the deposition of Matthew Fuller at the
6 request of counsel)

7 DESCRIPTION
8 Plaintiff's Exhibit 1
9 (Notice of Rule 30(B)(6) Deposition)

10 Plaintiff's Exhibit 2
11 (Defendants Liberty Power Corp., LLC and
12 Liberty Power Holdings, LLC's Second Amended
13 Fed. R. Civ. P. 26(a)(1) Disclosures)

14 Plaintiff's Exhibit 3
15 (Defendants Liberty Power Corp., LLC and
16 Liberty Power Holdings, LLC's Objections
17 and Answers to Plaintiffs' Second Set
18 Interrogatories)

19 Plaintiff's Exhibit 4
20 (Defendants' Objections and Responses to
21 Plaintiff Samuel Katz's First Set of
22 Requests for Production to Defendants
23 Liberty Power Corp., LLC and Liberty Power
24 Holdings, LLC)

1 M. CASTILLO

2 telemarketers' recordkeeping requirements.

3 Is it your understanding that that would be a
4 regulation that the vendors would comply with?

5 A. Yes.

6 MR. BRUNDAGE: Objection.

7 You can answer.

8 THE WITNESS: Sorry.

9 BY MR. PRESTON:

10 Q. Who is Mezzi Marketing?

11 A. They're one of our sales channels.

12 Q. Okay. Is Mezzi Marketing a good corporate
13 citizen?

14 MR. BRUNDAGE: Same objection.

15 You can answer.

16 THE WITNESS: I mean, as far as I'm aware. I
17 don't know.

18 (Plaintiff's Exhibit 6 was marked for
19 identification.)

20 BY MR. PRESTON:

21 Q. This is an email that defendants produced
22 marked LP2389.

23 MR. BRUNDAGE: Do you have a question?

24 MR. PRESTON: I do, but I want the witness to
25 read the email first.

1 M. CASTILLO

2 THE WITNESS: (Document review.)

3 Okay.

4 BY MR. PRESTON:

5 Q. What is your understanding of that document?

6 A. That they couldn't find the number in their
7 system when they ran a search to see if they dialed it.

8 Q. I want you to look at page 2 at the top of
9 the page.

10 A. Okay.

11 Q. What does it say?

12 A. "This number is not dialed from our end."

13 Q. Okay. Is that true?

14 MR. BRUNDAGE: Objection.

15 You can answer.

16 THE WITNESS: Oh, it is not true.

17 BY MR. PRESTON:

18 Q. Okay. Do you know why that this -- the last
19 page of the screen shot, do you know why that screen
20 shot shows no calls made?

21 MR. BRUNDAGE: Objection.

22 You can answer.

23 THE WITNESS: I do not.

24 BY MR. PRESTON:

25 Q. Do you know why J.T. asked for the screen

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1 M. CASTILLO

2 shot?

3 MR. BRUNDAGE: Objection.

4 You can answer.

5 THE WITNESS: Because of the complaints.

6 BY MR. PRESTON:

7 Q. Sure. But Mezzi had already told J.T. that
8 he had not called. Why did J.T. need the screen shot?

9 MR. BRUNDAGE: Objection.

10 You can answer.

11 THE WITNESS: It's part of the process. Just
12 to show proof that it was searched.

13 BY MR. PRESTON:

14 Q. Who created that process?

15 A. I don't know. That's the sales team. I
16 would have to say Gary since he's the manager.

17 Q. Okay. Why did Gary create that process?

18 A. Just to prove that if we're going to say it's
19 not that it was actually searched.

20 Q. Why didn't compliance create that process?

21 MR. BRUNDAGE: Objection.

22 You can answer.

23 THE WITNESS: I believe sales creates their
24 own process as far as how they're going to keep
25 tabs on their channels, their vendors.

1 M. CASTILLO

2 document?

3 THE WITNESS: Yeah.

4 BY MR. PRESTON:

5 Q. Okay. Look, if it's not a document, then let
6 me know.

7 A. I believe this is the confirmation, the
8 email.

9 Q. What was the last communication between
10 defendants and Mezzi?

11 MR. BRUNDAGE: Objection.

12 You can answer.

13 THE WITNESS: The last communication, I would
14 guess, would be the hold letters.

15 BY MR. PRESTON:

16 Q. Were there telephone calls that postdated the
17 litigation hold letters?

18 A. I don't know.

19 Q. Were there Skype communications?

20 A. I don't believe so. Not anymore.

21 Q. What's the basis of that belief?

22 A. A lot of our employees use their personal
23 Skype, and once it was determined that that can actually
24 be used, they encouraged against it.

25 Q. I want to clarify that testimony.

1 M. CASTILLO

2 A. Okay.

3 Q. When you say, "Once it was determined that it
4 could actually be used," what I understood you to mean
5 was once defendants understood that their employees'
6 personal Skype addresses could be used to communicate
7 with the vendors, they discouraged the use of
8 personal --

9 A. That it could be used in --

10 MR. BRUNDAGE: You have to let him finish.

11 BY MR. PRESTON:

12 Q. Right. They discouraged the use of personal
13 Skype addresses to communicate with the vendors; is that
14 correct?

15 A. That their personal Skype messages as a whole
16 could be --

17 Q. Discovered?

18 A. -- discovered, yes. So not just specific to
19 whatever case is happening but also their personal
20 interaction.

21 Q. When was it discovered -- when did the
22 defendants learn that Skype logs could be discovered?

23 A. When it was requested.

24 Q. So does December 2018 sound correct?

25 A. Yes.

1 M. CASTILLO

2 Q. Okay. And did defendants not understand that
3 Skype communications could be requested in discovery
4 before December 2018?

5 A. I don't believe so.

6 Q. Is Skype an important mode of communication
7 at Liberty Power?

8 A. It was.

9 Q. You say it was? Why is it not important now?

10 A. Because it was inexpensive, and we could
11 communicate with other channels that were located in
12 Canada or the Dominican Republic. Because the employees
13 were using their personal Skype, there was no charge.
14 So now they would prefer a business Skype, which hasn't
15 been implemented.

16 Q. Okay.

17 A. So that's why they're not using it anymore.

18 Q. I want to make that record clear.

19 A. Uh-huh.

20 Q. You indicated that Skype is free to use, and
21 it was a convenient way to communicate with vendors who
22 are overseas; correct? And what I understood you to
23 mean was that was -- those were reasons why defendants
24 used Skype?

25 A. Yes.

1 M. CASTILLO

2 able to pull and capture the 30 days --

3 A. I believe that was part of whenever his
4 computer was stored.

5 Q. Okay. Do you know why J.T. set his Skype to
6 delete after 24 hours?

7 A. I didn't even know it was an option.

8 Q. Do you know if anybody else working for
9 Liberty Power has set their chat logs to delete?

10 A. No.

11 MR. BRUNDAGE: You have to let him finish the
12 question.

13 THE WITNESS: Sorry.

14 BY MR. PRESTON:

15 Q. The question was done.

16 A. No.

17 MR. PRESTON: That's it. We can reconvene.

18 THE WITNESS: Okay.

19 (A luncheon recess was taken from 12:02 p.m.
20 until 12:57 p.m.)

21 BY MR. PRESTON:

22 Q. So we're resuming. I want to go back to
23 Exhibit 1, paragraph -- but 1 is just the calls made,
24 but then paragraph 2 talks about lead data containing
25 plaintiffs' personal information. Do you understand

1 M. CASTILLO

2 what that means?

3 A. I believe so.

4 Q. Okay. What does that mean?

5 A. Their phone numbers.

6 Q. Yes. But what documents contain that data?

7 A. The leads lists.

8 Q. The lead list. Okay. So are lead lists
9 provided to the vendors?

10 A. I believe they come from both. The vendors
11 will provide us a list, and we scrub it.

12 Q. Okay.

13 A. Actually I'm not sure if we provide a leads
14 list. I don't know that, off the top of my head.

15 Q. There's a document I want to show you.

16 MR. BRUNDAGE: Thank you. Are we marking
17 this?

18 MR. PRESTON: Yeah. I have Exhibit 8 as the
19 last exhibit. Okay. We're marking this Exhibit 9.

20 (Plaintiff's Exhibit 9 was marked for
21 identification.)

22 BY MR. PRESTON:

23 Q. All right. So this is an email chain that
24 was produced to us. Do you recognize this document?

25 A. I may have seen this, but I don't remember it

1 M. CASTILLO

2 all.

3 Q. Okay.

4 A. Yeah. I mean...

5 Q. Let's talk about 1242. There's a screen shot
6 of DNC number research for an 809 [sic] number. Do you
7 see that? I'm sorry. A 908 number. Do you see that?

8 A. Yes.

9 Q. Do you know where that screen shot is from?

10 A. It looks like we scrubbed it. Is that a
11 New Jersey number?

12 Q. Let me clarify. The screen shot itself,
13 that's not the text of the email?

14 A. Right.

15 Q. Somebody took a screen shot of a --

16 A. I'm not --

17 (Reporter requests discontinuation of
18 simultaneous conversation.)

19 BY MR. PRESTON:

20 Q. Somebody took a screen shot of some system,
21 and I'm asking: Do you know the system from which that
22 screen shot was obtained?

23 A. I'm not certain the name of the system. I
24 believe it's called Possible Now.

25 Q. Okay. Does Possible Now store lead data?

1 M. CASTILLO

2 1244, that looks like enrollment.libertypowercorp.com.

3 Is that kind of where deal capture lives?

4 A. Yes.

5 Q. Let's go back to 1243. There's a column that
6 says "Customer Date."

7 A. Okay.

8 Q. Do you know what that column means?

9 A. I believe that's the date they -- I believe
10 that is the day that they asked to be placed on -- I
11 can't answer for sure. I'm not sure. I'm not certain.

12 Q. All right. So on 1242 it says this 908
13 number was scrubbed on August 3rd, 2016, and
14 September -- excuse me -- was scrubbed on August 30th,
15 2016, and September 30th, 2016. So that meant that it
16 was in a -- that 908 number was in a lead list that was
17 passed on to vendors to call; correct?

18 A. I don't know if that leads list was actually
19 passed on, but it would have been on a leads list to be
20 checked, if that makes sense.

21 Q. Well, it was checked because it was scrubbed;
22 correct?

23 A. Right.

24 Q. So it would have been sent out -- I mean, it
25 was prepared for transmission --

1 M. CASTILLO

2 A. Transmission.

3 Q. -- to a vendor; correct?

4 A. Yes.

5 Q. Do you know how leads lists are sent to
6 vendors?

7 A. I do not.

8 Q. Do you know who would?

9 A. Albert.

10 Q. Okay. Do you know if this leads list was
11 ever sent out -- if these lead lists were ever sent out?

12 A. By the email it appears, yes, that they were.

13 Q. Okay. So the next page, 1243, there's a 508
14 number, and there's, you know, instances where the
15 number was uploaded in a call list, and there's a number
16 of call lists. Does it appear those lead lists were
17 sent out to vendors?

18 A. Yes.

19 Q. And the MEZ call list -- you'll see a file
20 name and one of the file names -- actually three of the
21 file names has the letters MEZ?

22 A. Yes.

23 Q. Does that reflect that the call list was sent
24 to Mezzi?

25 A. I believe so.

1 M. CASTILLO

2 Q. What's your basis for that belief?

3 A. It's mentioned on the screen shot.

4 Q. All right. So 1245. There's a set of
5 instances where a number was uploaded in a call list.
6 Do those files reflect that the -- that telephone number
7 was sent in a call list to vendors?

8 A. Yes. The 617 number.

9 Q. Yes. Okay. Let's be careful. There's two
10 617 numbers, 617 and 742?

11 A. Yes.

12 Q. So that 617-742 number was sent to the
13 vendors in a call list?

14 A. Yes.

15 Q. Was it sent to Mezzi?

16 A. Yes.

17 Q. Okay. So then there's another number, if you
18 look a little bit below, a 617-962 number.

19 A. Yes.

20 Q. Okay. Does that reflect that that 617-962
21 number was sent to Mezzi?

22 A. Yes.

23 Q. Do you know if defendants -- defendants
24 obviously searched for our clients' numbers?

25 A. Yes.

1 M. CASTILLO

2 Q. They did not produce these call lists to us?

3 A. These? Their deal -- the Possible Now?

4 Q. Yes, the Possible Now files. Do you know
5 why?

6 A. So these documents were not given by us?

7 Q. No.

8 A. I do not.

9 Q. They would be responsive; correct? They had
10 our clients' telephone numbers in them?

11 A. It appears so.

12 Q. At least some of those have the numbers that
13 are in Exhibit 5, that list of key words; correct?

14 A. Yes.

15 Q. Okay. And you do not know why they were
16 withheld?

17 A. I do not.

18 Q. Okay.

19 A. I do know we did two searches. So --

20 Q. I'm going to talk to you about that, but
21 I -- there's another document I want to show you first.

22 A. Okay.

23 MR. PRESTON: So I'm going to mark
24 Exhibit 10, and it is LP3528.

25 There you go.

1 M. CASTILLO

2 CSV file name, that starts -- it doesn't start. It says
3 Honduras Winbacks. Okay? And then there's a column
4 that is a 508-540 number; correct?

5 A. Yes.

6 Q. And then there's a call center outbound?

7 A. Yes.

8 Q. And then there's a date?

9 A. Yes.

10 Q. And you don't know what that is?

11 A. I don't know what that signifies, no.

12 Q. Okay. And then there is a MAl; correct?

13 A. Yes.

14 Q. And you don't know what that is?

15 A. Right.

16 Q. Does it appear based on those, the data in
17 the CSV file, that these telephone numbers were called
18 by defendants or Mezzi?

19 MR. BRUNDAGE: Objection.

20 You can answer.

21 THE WITNESS: It appears that way, yes.

22 BY MR. PRESTON:

23 Q. Okay. But you don't know where this came
24 from? And by "this" I mean Exhibit 10.

25 A. I do not.

1 M. CASTILLO

2 Q. And you don't know what Mr. Milenkov was
3 searching?

4 A. I do not.

5 MR. BRUNDAGE: Is Matt still on the phone?

6 MR. PRESTON: I think they both are. They
7 may have stepped away but...

8 MR. BRUNDAGE: Matt and Shaun?

9 MR. PRESTON: Yeah.

10 MR. BRUNDAGE: Okay. Thanks.

11 BY MR. PRESTON:

12 Q. Is there any reason why those numbers -- if
13 they're in those lists why they would not have been
14 called?

15 MR. BRUNDAGE: Objection.

16 You can answer.

17 THE WITNESS: Why they would not have been
18 called?

19 BY MR. PRESTON:

20 Q. Right.

21 A. No.

22 Q. Okay. So we have them -- clients appearing
23 in lead lists. We have lead lists that contain our
24 clients' numbers that were not produced to us; correct?

25 A. It appears that way, yes.

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1 M. CASTILLO

2 Q. Do the vendors' dialers accurately reflect
3 all the calls made by the vendors?

4 MR. BRUNDAGE: Objection.

5 You can answer.

6 THE WITNESS: I don't know. I don't know if
7 it was the way it was entered. I don't know why it
8 would miss it.

9 BY MR. PRESTON:

10 Q. Can the vendors delete calls of other
11 dialers?

12 MR. BRUNDAGE: Objection.

13 You can answer.

14 THE WITNESS: I don't know. I don't believe
15 so.

16 BY MR. PRESTON:

17 Q. What's the basis for that belief?

18 A. Well, then it would make -- I'm assuming it
19 would make it a nonsystem if they're able to delete
20 everything off of there or anything off of there.

21 Q. So it would make the system unreliable?

22 A. Right.

23 Q. Do you know why the vendors would delete
24 records?

25 MR. BRUNDAGE: Objection.

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1 M. CASTILLO

2 You can answer.

3 THE WITNESS: I do not.

4 MR. PRESTON: I'm going to mark 12. So
5 Exhibit 12 is LP4133.

6 (Plaintiff's Exhibit 12 was marked for
7 identification.)

8 BY MR. PRESTON:

9 Q. Is that your understanding of the policy --

10 A. I believe so.

11 Q. -- at Liberty?

12 A. I believe so.

13 Q. So there could technically be a whole series
14 of disposition reports reflecting calls to a particular
15 number; correct?

16 A. There could be.

17 Q. And it depends on whether or not they show up
18 in the weekly disposition reports?

19 A. Yes.

20 Q. Okay. So Liberty requires its vendors to
21 provide disposition reports every week?

22 A. Yes.

23 Q. Do you know how those disposition reports are
24 conveyed back to Liberty?

25 A. Via email.

1 M. CASTILLO

2 Q. Okay. Do you know if those disposition
3 reports are saved in the network drive?

4 A. I do not.

5 Q. Do you know if the -- Liberty Power searched
6 its network drive?

7 A. I believe it did.

8 Q. For disposition reports?

9 A. Not specifically disposition reports, but
10 using those key words, it should have hit.

11 Q. How do you know?

12 A. Because I provided them the request.

13 Q. And do you know who carried that out?

14 A. I was under the impression that when they do
15 search emails, that's on the network. I can't answer if
16 they went off the emails and into --

17 Q. Okay. So you don't know for sure if they
18 searched beyond emails?

19 A. Right.

20 Q. Okay. Is there any reason why the calls to
21 my clients -- well, let me rephrase.

22 Is there any reason why the disposition
23 reports showing calls to my clients were not produced?

24 MR. BRUNDAGE: Objection.

25 You can answer.

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1 M. CASTILLO

2 THE WITNESS: I don't know the reason why
3 that would happen.

4 (Plaintiff's Exhibit 13 was marked for
5 identification.)

6 BY MR. PRESTON:

7 Q. This is labeled 13 and this is LP58. Is it
8 fair for me to characterize this as an email from Mezzi
9 to J.T., indicating that Mezzi called (508)966-

10

11

12 (CONFIDENTIAL PORTIONS CONTINUE ON NEXT PAGE)

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1 M. CASTILLO

2 (CONFIDENTIAL PORTION)

3 [REDACTED].

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10 (NON-CONFIDENTIAL PORTIONS CONTINUE ON NEXT PAGE)

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1 M. CASTILLO

2 BY MR. PRESTON:

3 Q. And, again those four digits, last four
4 digits, are confidential.

5 -- on October 3rd, 2016.

6 A. Yes.

7 Q. So by October 17th, 2016, defendants knew
8 that Mr. Katz had complained; correct?

9 MR. BRUNDAGE: Objection.

10 You can answer.

11 THE WITNESS: Yes.

12 BY MR. PRESTON:

13 Q. And with this email, defendants knew that
14 Mezzi had called Mr. Katz; correct?

15 A. Yes.

16 Q. Why did defendants not seek Mezzi's call
17 records at this time?

18 A. I don't know that that wasn't done.

19 Q. Okay. So there could be call records that
20 defendants could have received from Mezzi in October of
21 2016?

22 A. I don't know.

23 Q. Okay. Do you have any basis to believe that
24 they did preserve call records from Mezzi at that point?

25 A. That Mezzi preserved call records?

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1 M. CASTILLO

2 Q. Or defendants preserved Mezzi's call records.

3 A. I don't know unless it was a TPV. If it was
4 a TPV, it would have been stored.

5 Q. But the question is: Did defendants preserve
6 call records from Mezzi which show this call
7 in -- depicted in LP58?

8 A. I don't know.

9 Q. Is there any particular reason why they would
10 not have preserved it?

11 A. No.

12 Q. Okay. So I'm going to show you Exhibit 14.
13 I'm marking Exhibit 14, and it is LP2373.

14 (Plaintiff's Exhibit 14 was marked for
15 identification.)

16 BY MR. PRESTON:

17 Q. Is it fair to say that this is an email from
18 J.T. to a bunch of people in QA and sales just a few
19 minutes after Exhibit 13 was sent?

20 A. Yes.

21 Q. Okay. What does it say?

22 A. "MEZ confirmed to have not dialed them added
23 them to their internal DNC."

24 Q. Why did J.T. deny that Mezzi called Katz?

25 MR. BRUNDAGE: Objection.

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1 M. CASTILLO

2 You can answer.

3 THE WITNESS: I don't know.

4 BY MR. PRESTON:

5 Q. Can we go back to Exhibit 6?

6 A. (Witness complies.)

7 Q. All right. Looking at page 2. Exhibit 6 is
8 in January 12th -- let me rephrase this.

9 Exhibit 6 is an email chain; correct?

10 A. Yes.

11 Q. And the first email in that chain is dated
12 January 12th, 2017?

13 A. 13. Yes. January 13, 2017. Am I not
14 looking at the right --

15 Q. No, no. You can read from -- so it's an
16 email chain --

17 A. Oh, I'm sorry. Yes.

18 Q. Chronologically on the page. Okay.

19 A. Yes.

20 Q. So the first -- chronologically the first
21 email in that email chain on Exhibit 6 is from
22 January 12th, 2017; correct?

23 A. Yes.

24 Q. Okay. And in it J.T. is asking for
25 information in Mezzi's dialers. It's about a call to

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1 M. CASTILLO

2 Samuel Katz?

3 A. Correct.

4 Q. And why is he asking that?

5 MR. BRUNDAGE: Objection.

6 You can answer.

7 THE WITNESS: I believe it was another
8 complaint or when the complaint came in. I'm not
9 sure what -- the dates.

10 BY MR. PRESTON:

11 Q. But if we look at the Exhibit 13, he -- Mezzi
12 had previously told J.T. that Mezzi had called
13 Mr. Katz's number in October of 2016.

14 A. I do see that.

15 Q. So why is J.T. asking again?

16 MR. BRUNDAGE: Objection.

17 You can answer.

18 THE WITNESS: I don't know.

19 BY MR. PRESTON:

20 Q. Why does J.T. ask for a screenshot?

21 MR. BRUNDAGE: Objection.

22 You can answer.

23 THE WITNESS: I believe that's the process to
24 show proof.

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1 M. CASTILLO

2 BY MR. PRESTON:

3 Q. Proof of what?

4 A. That he searched.

5 Q. But the search is incorrect.

6 MR. BRUNDAGE: Objection.

7 THE WITNESS: That's true.

8 BY MR. PRESTON:

9 Q. What does that tell you about the purpose of
10 the search, Ms. Castillo?

11 MR. BRUNDAGE: Objection.

12 You can answer.

13 THE WITNESS: I don't know. I don't know why
14 they conflict.

15 BY MR. PRESTON:

16 Q. The sales process is used to confirm that
17 calls are not made; correct?

18 A. Right. Yes.

19 Q. Does the sales process sometimes confirm
20 calls are not made when, in fact, the calls are made?

21 A. It appears. Yes.

22 Q. It appears so --

23 A. Yes, it appears so.

24 Q. -- based on Exhibit 6, 13, and 14?

25 A. Yes.

Contains Confidential Portions
Page 82, 104, & 136

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1 M. CASTILLO

2 C E R T I F I C A T E

3 - - -

4 THE STATE OF FLORIDA

5 COUNTY OF PALM BEACH

6 I hereby certify that I have read the
7 foregoing deposition by me given, and that the
8 statements contained herein are true and correct to the
9 best of my knowledge and belief, with the exception of
10 any corrections or notations made on the errata sheet,
11 if one was executed.

12
13 Dated this ____ day of _____,
14 2019.

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20 MICHELLE CASTILLO
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